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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,022

04/08/2005

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25944 7590 10/18/2007  
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EXAMINER

KAVANAUGH, JOHN T

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

10/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/527,022	Applicant(s) GIBERT ET AL.	
	Examiner /Ted Kavanaugh/	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4-14 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. Claims 1-3 and 15-18 are objected to because of the following informalities: In claims 1 and 15, "the longitudinal axis" and "the front part" lack proper antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1 and 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 8, the "front" lacks proper antecedent basis and it is not clear is applicant is referring to the front of the foot, the front of the foot, the front of the footwear item, the front of the dynamic support element, etc.

In claim 5, lines 13-14, the phrase "the front" lacks proper antecedent basis and it is not clear is applicant is referring to the front of the foot, the front of the foot, the front of the footwear item, the front of the dynamic support element, etc.

In claim 15, line 17, the phrase "the plane of the," is incomplete and indefinite and therefore the scope of the claim cannot be determined.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 15-18, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by US 6393731 (Moua et al).

Moua teaches a shoe having a sole (sole section 16) having structure as claimed including a dynamic support element comprising at least two elastically deformable components (plurality of springs – see the figures which show the springs extending throughout the sole including aligned and extending in the transverse directions across the sole on either side of the longitudinal axis of the sole). The dynamic support element has springs and therefore stores and release energy when said sole is subject to lateral stresses. Regarding claim 2, the spring plate can be the walls that extends between the springs and/or extends above or below the springs, these plates extend “at least partially beneath a zone corresponding to the arch of the foot”, as claimed.

5. Claims 1-3 and 15-18, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by US 6282814 (Krafsur et al).

Krafsur teaches a shoe having a sole (sole section 16) having structure as claimed including a dynamic support element comprising at least two elastically deformable components (plurality of wave springs – see the figure 6 which show the springs extending in the forepart and heel part of the sole including being aligned and extending in the transverse directions across the sole on either side of the longitudinal axis of the sole). The dynamic support element has springs and therefore stores and release energy when said sole is subject to lateral stresses. Regarding claim 2, the

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spring plate can be the walls that extends between extends above or below the springs, these plates extend "at least partially beneath a zone corresponding to the arch of the foot", as claimed.

***Response to Arguments***

6. Applicant's arguments filed 9-28-2007 have been fully considered but they are not persuasive.

Applicant argues "Nowhere does Moua teach or suggest a 'sole comprises a dynamic support element which comprises at least two elastically deformable components located in the front and on either side of the longitudinal axis of said sole' as required by claims 1 and 15".

In response, the springs of Moua are compressible and therefore are elastic and deformable. With respect to their location, as pointed out in the rejection above, the springs, as shown in the figures, extending throughout the sole including being aligned and extending in the transverse directions across the sole on either side of the longitudinal axis of the sole.

Applicant argues "Krafsur discloses....a first spring...in the heel portion...and a second spring...in the ball portion....Nowhere does Moua teach or suggest a 'sole comprises a dynamic support element which comprises at least two elastically deformable components located in the front and on either side of the longitudinal axis of said sole' as required by claims 1 and 15".

In response, it would appear applicant is only looking at the embodiment shown in figure 1 and not the one in figure 6 which shows more than one spring in each the

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heel area and the forefoot area. Therefore the springs are aligned in a transverse direction across the sole and on either side of the longitudinal axis of the sole. The springs of Krafur are compressible and therefore are elastic and deformable.

### **Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. **Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:**

-**"The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references."**

--**"A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section."**

-Moreover, **"The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims."**

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**Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06" MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.**

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

/Ted Kavanaugh/  
Primary Examiner  
Art Unit 3728

TK  
October 12, 2007